



10 ADMINISTRATION

Effective: 6/1/96

10.41 Confidentiality

POLICY: WIC participant information is confidential and may be disclosed to others only as allowed by Federal WIC Regulations, USDA policy, and, in some more restrictive situations, such as Wisconsin Statutes.

PROCEDURE:

A. PARTICIPANT REVIEW OF THEIR OWN FILES

1. WIC participants and parents, legal guardians, or legal custodians of minor WIC participants usually have access to their own or their infant/child's records. They may:
 - a) inspect the WIC applicant/participant file during regular WIC office hours
 - b) receive a copy of the file
 - c) request that a copy of the records be sent to another health care provider (verbally or in writing)
2. In most instances, rights available under Wisconsin law are such that the participant and their legally authorized representatives can obtain access to other materials in the file, such as documentation of income provided by third parties or any information which serves as a staff assessment of the participant's condition or behavior. However, if the document contains information obtained under a pledge of confidentiality, or if disclosure of the document would jeopardize an investigation, seek legal advice to determine whether to withhold the staff assessment or third party record.
3. When the participant is an adolescent minor, the authority of the parent, guardian, or legal custodian to obtain access to records of the participant becomes more complicated. If the minor is married, the Wisconsin Statutes declare that the minor is emancipated. The married minor has control over access to her records. However, if the minor is unmarried, things are less clear. If the participant is an unmarried minor who is capable of understanding the act of consent and its consequences (e.g., a mature pregnant adolescent), and if the minor consents to the access by the parent, guardian, or legal custodian, the access can occur. If the unmarried minor opposes the access but the parent, guardian, or legal custodian still requests access, seek legal advice to determine whether record access must be allowed.



4. In cases of divorce, regardless of who has custody, both parents have the same access to an unmarried minor WIC participant's file unless the court custody order specifies otherwise. See C. RELEASE WITH INFORMED WRITTEN CONSENT.

**B. RELEASE OF WIC APPLICANT/PARTICIPANT INFORMATION
WITHOUT INFORMED CONSENT**

Release of WIC applicant/participant information, whether observed or obtained, without informed consent is limited to:

1. Persons directly connected with the administration or enforcement of the program, including persons investigating or prosecuting violations in the WIC Program under Federal, State, or local authority. "Persons directly connected with the administration... of the program..." includes WIC staff and managers and administrators who are responsible for the ongoing conduct of program operations. It does not include, for example, personnel in the Department of Health and Social Services or local agency who do not have ongoing involvement in the operation or management of the program. Thus, this provision excludes operational personnel who do not certify or serve WIC applicants/participants and administrators who do not directly supervise WIC staff.
2. WIC volunteers may be considered to be directly connected to the administration of the program. Volunteers (including but not limited to students, researchers, and Quality Assurance committees) who are given access to client information must be trained on the specific confidentiality requirements governing the WIC Program and must sign statements that they will keep information confidential.
3. Public health and welfare programs with which the WIC Program has agreements or memoranda of understanding (MOU) for release of WIC applicant/participant information for the purpose of establishing their eligibility for those programs' services and conducting outreach. See also part C.2. for situations under which a written release is required regardless of whether or not there is an MOU or agreement. (Agreements or contracts involve money; MOUs do not include money.)
 - a) The Programs with which the WIC Program, at the state or local level, may develop MOUs/agreements are:
 - (1) Administered by the Bureau of Public Health:
 - (a) Immunization Program
 - (b) Maternal and Child Health Block Grants



- (c) Birth to Three Program
- (d) Congenital Disorders Program
- (e) Family Planning Program
- (f) Lead Program
- (g) Children with Special Health Care Needs
- (h) Prenatal and Pediatric Nutrition Surveillance Systems
- (2) Administered by the Bureau of Health Care Financing: Medical Assistance (e.g., Healthy Start, HealthCheck, Prenatal Care Coordination)
- (3) Administered by the Division of Economic Support:
 - (a) AFDC
 - (b) Food Stamps
- (4) Administered by the Division of Health: Center for Health Statistics
- (5) Administered by the University of Wisconsin - Extension:
 - (a) Extension Food and Nutrition Education Program (EFNEP)
 - (b) Other food programs and grants
- (6) Other:
 - (a) Head Start (Note: because there is no state Head Start office, MOUs must be developed locally.)
 - (b) Well-Child Care Programs conducted in local health departments
 - (c) Generalized Public Health Nursing Programs
- b) Local WIC Projects may enter into written agreements/MOUs with the programs listed above at the local level for the purpose of establishing applicant/participant eligibility for services and conducting outreach. Agreements/MOUs may not be made with umbrella agencies which would make information indiscriminately available to a wide variety of personnel



and programs. Agreements/MOUs with each agency or program must specify:

- (1) what program(s) will have access to the information and specifically what information is to be disclosed
 - (2) the purposes for which the information will be used
 - (3) the receiving agency/program's assurance that it will not, in turn, disclose this information to other providers/programs/agencies except to the extent the additional disclosure is for the purpose of accomplishing the eligibility or outreach services specified in the MOU, and then only to the extent such additional disclosure is allowed by the laws applicable to those services
 - (4) if appropriate, the time period for which the agreement/MOU is effective or that it is to be reviewed/renewed
 - (5) (as applicable) a statement that written consent is required for disclosure of treatment for mental illness, developmental disabilities, and alcoholism or drug abuse; and, regarding HIV infection test results, as required by S.252.15 Wis. Stats. (See C.3. of this policy).
 - (6) (optional) a statement that a state agreement/MOU with the same program/agency will supersede the local agreement/MOU
- c) All local agreements/MOUs must comply with each program's confidentiality requirements (per federal statutes and regulations, Instructions, policies; and state statutes and rules). It is the local agency's responsibility to assure compliance with other programs' confidentiality provisions; review by legal counsel may be needed. WIC agreements/MOUs must be approved by the Regional Office Nutrition Consultant prior to implementation (see the Attachment, "WIC Confidentiality Checklist").
- d) WIC applicants/participants must be informed that information may be disclosed prior to disclosing it.
- (1) As of 9/94, the Rights and Responsibilities on the ID card includes the following statement: "Information may be provided to other health or welfare services for determining eligibility for those services and conducting outreach."
 - (2) WIC projects must maintain an up-to-date list of all programs to which information may be disclosed (per agreements/MOUs) and present it upon



the applicant/ participant's request (see the Attachments, "Listing of State Agreements/Memoranda of Understanding for Disclosing WIC Information" and "Listing of Local Agreements/ Memoranda of Understanding for Disclosing WIC Information"). The State List will be maintained by the State WIC Office, and the Local List should be completed and maintained by the local project. It is recommended that the lists be presented at all certifications.

- e) Unless an agreement/MOU specifies otherwise, applicants and participants do not have the option of declining to permit such information disclosure if they wish to participate in the WIC program. However, if an applicant/participant strongly objects to disclosure, project staff should attempt to accommodate the request unless it would mean falsifying data entered into the file (including DAISy) or if there are no established procedures to prevent unwanted disclosure. If the right to refuse disclosure is offered, a release form must be used (see C. RELEASE WITH INFORMED CONSENT section). In these cases, assure that information is not mistakenly disclosed (including through DAISy or other reports).
- 4. Federal or state government agency staff performing audits, program monitorings or evaluations, or other legal authorized functions, all of which must be related to the WIC Program. An example is monitoring visits by Central Office WIC staff or Regional Office Nutrition Consultants. Private, city, or county auditors may also have access to WIC participant files for WIC audit purposes.
- 5. County departments of social services, county departments of human services, a sheriff or police department, or a district attorney, for the investigation of threatened or suspected child abuse or neglect involving a particular child or children. If a child's or abuser's name is unknown to the investigator at the time of the investigator's request for records, the investigator must provide the WIC Program with other identifying information sufficient for the WIC Program to determine which person's records are in question. Section 48.981 of the Wisconsin Statutes requires certain professionals to report child abuse or neglect concerning children they have seen in the course of their professional duties and to cooperate in such investigations whether or not the initial report of abuse or neglect came from the professional. Among the categories of professionals obligated are physicians, nurses, all other medical professionals, mental health professionals, social workers, public assistance workers, therapists, and (effective July 1, 1995) certified dietitians. Others may also report suspected or threatened child abuse or neglect.
- 6. Law enforcement agencies or prosecutors for purposes of investigating or prosecuting fraud or other crimes concerning the WIC Program. In some situations the reason for the request could be clearly unrelated to WIC



fraud/crimes (e.g., a police officer wants to see if WIC has the current address of a traffic offender) and thus, the request must be denied. Other cases may be very clearly related (e.g., income falsification during application for WIC). If there is any question, contact the Compliance Manager in the Vendor Unit.

7. In the case of a search warrant, project staff should request that the person serving the warrant wait while the project calls its attorney for advice. If the person serving the warrant refuses to wait, project staff should carefully review the search warrant and provide only the specific information or records requested in the search warrant, and no other information or records. If not notified previously, the project's attorney should be notified immediately after the disclosure has occurred. In order to defend the WIC project in the event a legal action is filed against the WIC project by a person whose information or records were the subject of the search warrant, WIC staff should retain a copy of the search warrant for their files as evidence of the reason for the disclosure.
8. A subpoena is not the same thing as a court order. It does not represent a court's ruling that information must be released without consent. If a subpoena is served upon them, State or local agencies in consultation with their legal counsel must make a determination of whether to comply with the subpoena and release the information as requested or attempt to quash the subpoena.

C. RELEASE WITH INFORMED WRITTEN CONSENT

1. Written informed consent is required for the release of information to other programs, organizations, and individuals not covered above. For example:
 - a) sending hematocrit/hemoglobin test results or other information to a private physician or other health care provider not covered by agreements/MOUs
 - b) releasing information to agency nurses who do not work directly with the WIC Project for programs/services not covered by agreements/MOUs
 - c) releasing information to an attorney or private investigator hired by the participant (or a minor participant's parent or guardian)
 - d) disclosing information to human service providers not covered by agreements/MOUs, except for child abuse and neglect investigation purposes; and
 - e) releasing information that identifies them as a WIC participant except as covered by agreements/MOUs



- f) disclosing alcohol and drug information obtained using screening/assessment techniques beyond the mandates of Public Law 100-690
 - g) publishing names or printing pictures of participants in a WIC newsletter
2. Informed written consent of the client or person legally authorized to give consent on behalf of the client shall be obtained prior to disclosure of treatment for mental illness, developmental disabilities, and alcoholism or drug abuse. Obtained information shall not be redisclosed to a third party (i.e., agency) without written consent. When in doubt about disclosing information, it is highly advisable that professionals use their judgment and secure a written consent prior to disclosure of sensitive information.
 3. Disclosure of HIV infection is a sensitive issue. In general, HIV infection test results may be disclosed to another health care provider without written consent as long as it is pertinent to care of that individual.
 4. Signatures: The written informed consent may be signed by the participant (if an adult or married minor); the parent, legal guardian, or legal custodian of an unmarried minor who is deemed incapable of giving consent; or the unmarried minor if she is deemed capable of giving consent. See also section D. FOSTER PARENTS AND FOSTER CHILDREN.
 5. The consent must include:
 - a) name of participant whose information is being disclosed
 - b) name of agency being authorized to make the disclosure
 - c) purpose of disclosure
 - d) type of information to be disclosed
 - e) individual, agency, or organization to which disclosure may be made
 - f) signature of participant or other person giving consent
 - g) date on which consent is signed
 - h) time period during which consent is effective (no later than the next certification)
 - i) if the consent is for a disclosure desired by the WIC program or entity having an agreement/MOU with the WIC program, a statement that failure to sign in



no way jeopardizes WIC program eligibility or participation. (However, if the consent is for a disclosure requested by the participant or person authorized to consent for the participant, and is desired by the participant or authorized person for reasons unrelated to any activity involving WIC or agreement/MOU activities, the statement is not required.)

6. Consent forms must not be mentioned to the participant/guardian until after the certification process is completed and the applicant has been informed of the WIC eligibility determination. This helps to assure the applicant/participant that failure to sign does not jeopardize participation in the WIC Program.
7. Applicants/participants must not be asked to sign general release forms which give the Project unlimited authority to release information, or which take the place of agreements with health and welfare organizations.
8. The written informed consent must be maintained in the participant's file. The person giving consent may have a copy upon request.

D. FOSTER PARENTS AND FOSTER CHILDREN

Foster parents do not have complete authority over a foster child. Although the foster parent may sign that he or she has read the Rights and Responsibilities for WIC certification purposes, the authority of a foster parent to sign a written consent for release of the child's information will depend upon the circumstances involving the child, including the nature of any court proceedings or voluntary placement.

1. Determine who can consent to disclosures of information concerning a foster child by asking the foster parent.
 - a) If the foster parent is sure about their rights to consent to disclose information and knows how these rights were obtained, document this, and allow the foster parent to sign a release.
 - b) If the foster parent is unsure, check with the case worker/agency who supervises the child's placement in the foster home to determine who can consent to disclosures of information concerning the child.
2. If a birth parent wants access to the foster child's information:
 - a) If a birth parent's rights have been entirely terminated by the court, the birth parent no longer has the status of "parent" and loses all right of access to information which would ordinarily be accessible to a parent.
 - b) If there has not been a complete termination of parental rights, the rights of the parent may have been restricted by a court order.



3. A court also has authority to order that the name and address of the foster parents be withheld from the child's parent or guardian. A foster parent must be asked whether the child's parent or parents have had parental rights terminated and whether there is a court order preventing release of the foster parent's name and address to a parent or guardian, or otherwise restricting disclosure of the child's records to the parent.
 - a) If there has been a termination of parental rights, or if the court has issued an order restricting access to information:
 - (1) write "confidential" on the outside of the participant file, or otherwise flag the file as a reminder that there is a special restriction on access to information
 - (2) in the participant file, indicate the nature of the restriction. If there has been a termination of parental rights, indicate that, and withhold all information about the child from the terminated parent(s). If there has been a court order prohibiting release of foster parent name and address to a parent or guardian, or if there is some other court order limiting information access by the parent, indicate what restriction exists, and
 - (3) in DAISy, enter wording in the comment section, such as "confidential: foster parent names and address are restricted" or "confidential: birth parent access is restricted." Also, if any DAISy reports print names of both the child and the foster or birth parent, consider entering NONE instead of the birth or foster parent name.
 - b) If a court order requires some information to be withheld from a guardian or from a parent whose rights have not been entirely terminated, but other information is allowed to be disclosed to the parent or guardian:
 - (1) a request by the restricted parent or guardian to see the child's file must be handled in such a way that information prohibited from disclosure is not legible when the records are reviewed by the restricted person.
 - (2) It may be necessary to make a copy, eliminate the protected information on the copy with a black marker or white-out, and then make another copy of the record so that the protected information cannot be read.

E. RELEASE OF ANONYMOUS INFORMATION

Information may be released in a way that protects the identity of the individuals. Requests for data in aggregate or summary form may be granted as long as the released information excludes any items that identify program participants or applicants.



F. MAILINGS/TELEPHONE MESSAGES

The potential of mailings or telephone calls to compromise a WIC applicant's/participant's confidentiality must be assessed. In order to avoid or minimize confidentiality concerns, the project should have a written procedure pertaining to how applicants/ participants are informed that they may get a mailing or telephone call, e.g.:

1. Applicants/participants may be informed at the time they contact the WIC clinic and/or prior to application that reminder postcards will be sent to them. They should be given the opportunity to designate whether or not they want this reminder.
2. Applicant/participants may be informed that a telephone call will be made, and confirm the phone number where they can be reached and any special instructions for leaving messages with others at the number or on an answering machine. It may be preferable to remind a client of their appointment at the "health department" instead of "WIC appointment."
3. If an applicant/participant calls the WIC office and leaves a message to call him/her at a particular number, no violation of WIC confidentiality occurs when the telephone call is returned.
4. At a minimum, document in participant's files and any other pertinent lists/files (e.g., computer listings) those that indicate that it is not acceptable to send reminders, etc.

G. STORAGE OF PARTICIPANT FILES

1. Participants' files must be maintained in locked files and/or in rooms which can be locked and are secure from unauthorized entry.
2. When files are used during certification clinics or at draft issuance, files must be handled in ways to maintain participant confidentiality, e.g., so that participants cannot read another person's file.
3. Files must not be taken home or to other places except as required for travel to clinics or draft issuance sites. During such travel, files should be transported in a way to maintain confidentiality (e.g., in a locked trunk).

H. OTHER SITUATIONS

Other situations in which confidentiality policies apply include, but are not limited to, integrated client files, integrated/linked computer systems, and joint program application forms. For more information, see FNS Instruction 800-1.



ATTACHMENTS

WIC Confidentiality Checklist

Listing of State Agreements/Memoranda of Understanding for Disclosing Information

Listing of Local Agreements/Memoranda of Understanding for Disclosing Information

FNS Instruction 800-1 re: Confidentiality